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11 UNITED STATES DISTRICT COURT  
12  
13 DISTRICT OF NEVADA

14 \* \* \* \* \*

15 TOM COLLINS, individually and as County  
16 Commissioner of Clark County, Nevada,

CASE: 2:09-cv-01931

17 Plaintiff,

18 vs.

19 CLARK COUNTY, NEVADA, a political  
20 subdivision of the State of Nevada; FISHER  
21 SAND & GRAVEL CO., a North Dakota  
22 corporation; and LAS VEGAS PAVING  
23 CORPORATION, a Nevada corporation,

24 Defendants.

25 **COMPLAINT**

26 COMES NOW the Plaintiff, TOM COLLINS, individually and in his capacity as  
27 a County Commissioner of Clark County, Nevada, by and through his counsel of  
28 record, of the law firm Ellsworth, Moody & Bennion, Chtd., and hereby complains  
and alleges as follows:

**PARTIES AND JURISDICTION**

1. Plaintiff Collins is a resident of Clark County, Nevada.
2. Defendant CLARK COUNTY NEVADA is a political subdivision of the State of Nevada.
3. Defendant FISHER SAND & GRAVEL CO. is a North Dakota corporation doing business in Clark County, Nevada.



1 4. Defendant LAS VEGAS PAVING CORPORATION is a Nevada corporation  
2 doing business in Clark County, Nevada.

3 5. The U.S. District Court has jurisdiction in this case because some or all of  
4 Plaintiff's claims arise under the Constitution, laws, or treaties of the United  
5 States.

6 6. Venue is proper in this judicial district as the events and/or omissions giving  
7 rise to this complaint occurred in Clark County, Nevada.

8 **GENERAL ALLEGATIONS**

9 7. Plaintiff repeats and realleges each of the foregoing allegations, as though fully  
10 set forth herein.

11 *TOM COLLINS' DUTIES AND RESPONSIBILITIES AS A COMMISSIONER*

12 8. Plaintiff sits as a member of Clark County Commission, as an elected  
13 representative of the people of Clark County, Nevada.

14 9. As an elected representative, Plaintiff's duties include (but are not limited to):  
15 a) To expend money for any purpose which will provide a substantial benefit to  
16 the inhabitants of the county;  
17 b) To lay out, control and manage public roads and bridges;  
18 c) To control the prosecution or defense of all suits to which the county is a  
19 party; and  
20 d) To do and perform all such other acts and things as may be lawful and  
21 strictly necessary to the full discharge of the powers and jurisdiction conferred  
22 on the board.

23 10. Plaintiff performs these duties, *inter alia*, by participating in formal meetings  
24 of the Clark County Commission, and by voting on the resolutions presented to  
25 that political body.

26 11. Plaintiff has taken an oath to perform these duties to the best of his ability, as  
27 required by state law.  
28



*THE COUNTY PROJECT GIVING RISE TO THIS CONTROVERSY*

12. On or about October 17, 2008, the Clark County Commission solicited bids for a work of improvement on a county road, namely, a portion of Route 215 in Clark County, Nevada, known as Bid 601309-08 ("the Bid").

13. Defendants Fisher Sand & Gravel and Las Vegas Paving submitted competing bids for the road improvement.

14. On or about July 21, 2009, the Clark County Commission voted to award the road improvement contract to Las Vegas Paving.

15. Plaintiff Collins cast a vote in that decision.

*FISHER SAND & GRAVEL SUES TO CHANGE THE VOTE, AND THE  
DEFENDANTS HOLD A PRIVATE MEETING TO GERRYMANDER THE  
COMMISSION'S VOTES*

16. Shortly after said vote, Fisher Sand & Gravel filed suit against Las Vegas Paving and Clark County, Nevada, apparently to force the Clark County Commission to award *it* the road improvement contract, instead of Las Vegas Paving.

17. The suit was removed to the U.S. District Court for the District of Nevada, and is now identified as Case No. 2:09-cv-1372-RCJ-GWF.

18. On or about August 25, 2009, the U.S. District Court heard oral argument on Fisher Sand & Gravel's petition for a writ of mandamus.

19. Either during or prior to oral argument, counsel for the parties to that suit met privately.

20. Upon information and belief, counsel for the parties to Case No. 2:09-cv-1372-RCJ-GWF reached some secret agreement regarding the writ of mandamus.

21. Upon the conclusion of that secret meeting, counsel for the parties to Case No. 2:09-cv-1372-RCJ-GWF appeared in court and counsel for Fisher Sand & Gravel orally amended its motion to request the following:



1 a) That the Clark County Commission re-hear the bidders' presentations for  
2 the Bid;

3 b) That the Clark County Commission take a new vote on the Bid;

4 c) That Commissioner Steve Sisolak not participate in the new vote; and

5 d) That Commissioner and Plaintiff Tom Collins not participate in the new  
6 vote.

7 22. Counsel for Clark County and Las Vegas Paving represented to the court that  
8 they would not oppose Fisher Sand & Gravel's oral motion, thereby showing  
9 express and/or implied agreement to the terms of said motion.

10 23. Counsel for Fisher Sand & Gravel then prepared a written order on that  
11 stipulation. Fisher Sand & Gravel's order stated that, "Commissioners Steven  
12 Sisolak and Tom Collins, by willing agreement, not be allowed to participate in  
13 the reconsideration..."

14 24. Tom Collins was not present at the District Court hearing on August 25, 2009.

15 25. Tom Collins was never asked by the County's attorneys whether he consented  
16 to Fisher Sand & Gravel's oral motion that he abstain from the re-vote on the  
17 Bid.

18 26. Tom Collins did not, in fact, consent to abstain from the re-vote on the Bid.

19 27. The County's attorneys lacked actual authority to enter into that agreement  
20 with Fisher Sand & Gravel and Las Vegas Paving on behalf of Tom Collins.

21 28. The County's attorneys lacked apparent authority to enter into that agreement  
22 with Fisher Sand & Gravel and Las Vegas Paving on behalf of Tom Collins.

23 29. Furthermore, the U.S. District Court did *not* make any finding of fact or  
24 conclusion of law that Collins was biased in his prior vote on the Bid.

25 30. Collins' prior vote on the Bid was not influenced or altered by any unlawful  
26 bias.

27 31. Pursuant to Nevada law, Collins is entitled to participate in the re-hearing and  
28



re-vote on the Bid.

32. Collins has a duty to his constituents to participate in the re-hearing and re-vote on the Bid.

### FIRST CAUSE OF ACTION

#### *(Declaratory Relief)*

33. Plaintiff repeats and realleges each of the foregoing allegations, as though fully set forth herein.

34. The Clark County Commission has the statutory power and duty to control the County's defense of Case No. 2:09-cv-1372-RCJ-GWF.

35. The County's attorneys lack authority to enter into any agreement settling the case or any substantive portion thereof, without the County Commission's consent and permission.

36. Attorneys for Fisher Sand & Gravel, Las Vegas Paving, and Clark County reached an agreement or stipulation settling a substantive portion of the case on or about August 25<sup>th</sup>.

37. The County's attorneys lacked actual authority to stipulate that Tom Collins would not participate in the new vote on Bid 601309-08.

38. The County's attorneys lacked apparent authority to stipulate that Tom Collins would not participate in the new vote on Bid 601309-08.

39. Tom Collins did not in fact stipulate or agree that he would not participate in the new vote on Bid 601309-08.

40. For the foregoing reasons, the agreement between Fisher Sand and Gravel, Las Vegas Paving, and Clark County reached on or about August 25, 2009, is void as to Tom Collins.

41. For the foregoing reasons, the order on Fisher Sand & Gravel's petition for writ of mandamus is void as it relates to Tom Collins and his ability to participate in the re-vote.



42. Collins is entitled to declaratory judgment that the order granting Fisher Sand & Gravel's petition for writ of mandamus in Case No. 2:09-cv-1372-RCJ-GWF is void as described herein, and that Collins may participate in the re-hearing and new vote on the Bid.

43. Collins has been required to retain legal counsel in this action, and is entitled to an award of attorney's fees and costs of suit.

## **SECOND CAUSE OF ACTION**

### *(Injunctive Relief)*

44. Plaintiff repeats and realleges each of the foregoing allegations, as though fully set forth herein.

45. The County's attorneys lacked actual authority to stipulate that Tom Collins would not participate in the new vote on the Bid.

46. The County's attorneys lacked apparent authority to stipulate that Tom Collins would not participate in the new vote on the Bid.

47. Tom Collins did not in fact stipulate or agree that he would not participate in the new vote on the Bid.

48. For the foregoing reasons, the agreement between Fisher Sand and Gravel, Las Vegas Paving, and Clark County reached on or about August 25, 2009, is void as it relates to Tom Collins and his ability to participate in the re-vote.

49. For the foregoing reasons, the order on Fisher Sand & Gravel's petition for writ of mandamus is void as it relates to Tom Collins and his ability to participate in the re-vote.

50. Collins is entitled to preliminary and permanent injunctions preventing the Defendants from interfering with Collins' right and duty to participate in the re-hearing and new vote on the Bid.

51. Collins has been required to retain legal counsel in this action, and is entitled to an award of attorney's fees and costs of suit.



**THIRD CAUSE OF ACTION**

*(Violation of Nevada's Open Meeting Law, NRS 241.010 et seq.)*

52. Plaintiff repeats and realleges each of the foregoing allegations, as though fully set forth herein.

53. Nevada's open meetings law requires that substantive decisions be taken in a duly-noticed meeting open to the public.

54. Nevada's open meetings law specifically requires that any meeting to consider the character, alleged misconduct or professional competence of an elected member of a public body be duly noticed and open to the public.

55. Fisher Sand & Gravel has alleged that Tom Collins acted with unlawful bias in the original vote on the Bid.

56. Tom Collins did not cast his vote under the influence of any unlawful bias.

57. Nevertheless, on or about August 25, 2009, attorneys for Fisher Sand & Gravel met in private with counsel for the Defendants to discuss the character and fitness of Tom Collins and Steve Sisolak to participate in the new vote on the Bid.

58. During or as a result of that private meeting, an agreement or stipulation was reached settling a substantive portion of the case on or about August 25<sup>th</sup>.

59. One or more of the following constitute an action that would require the approval of a quorum of the Clark County Commission:

a) Clark County's decision to enter into an agreement settling some or all of Fisher Sand & Gravel's claims in Case No. 2:09-cv-1372-RCJ-GWF;

b) Clark County's decision to settle and/or acquiesce to any of Fisher Sand & Gravel's requests in the written and oral petitions for a writ of mandamus in Case No. 2:09-cv-1372-RCJ-GWF; and/or

c) Clark County's decision to abandon any defense or opposition to Fisher Sand & Gravel's written and oral petitions for a writ of mandamus in Case No.



2:09-cv-1372-RCJ-GWF.

60. Unless specifically exempted by statute, decisions and actions of the Clark County Commission must be taken in a duly-noticed open meeting, or else they are void as a matter of law.

61. Furthermore, the subject matter of the aforementioned actions would necessarily consider the character, alleged misconduct or professional competence of Commissioners Tom Collins and Steve Sisolak.

62. Nevada law requires that meetings to discuss the character, alleged misconduct or professional competence of county commissioners be held in duly-noticed open meetings.

63. None of the aforementioned actions and decisions were taken during a duly-noticed public meeting of the Clark County Commission.

64. Closed meetings were held to discuss the character, alleged misconduct or professional competence of Commissioners Tom Collins and/or Steve Sisolak.

65. Tom Collins was not present during said closed meetings.

66. Any of the aforementioned actions and/or decisions of the Clark County Commission which were taken or approved by a quorum of Commissioners outside of a duly-noticed public meeting are void as a matter of law.

67. Any of the aforementioned actions of Clark County's attorneys which were based upon a quorum of the Commission's decisions in violation of Nevada's open meetings law are void as a matter of law.

68. To the best of Tom Collins' knowledge and information, a quorum of the County Commission did not take a vote in a duly-noticed public meeting to approve the aforementioned actions in Case No. 2:09-cv-1372-RCJ-GWF, making the aforementioned actions void as a matter of law.

69. To the best of Tom Collins' knowledge and information, a quorum of the County Commission did not take any vote to approve the aforementioned





actions in Case No. 2:09-cv-1372-RCJ-GWF, thus the aforementioned actions were unauthorized and are therefore void as a matter of law.

70. Collins has the right and duty to participate in the re-hearing and new vote on the Bid.

71. Collins is entitled to a judgment that the order granting Fisher Sand & Gravel's petition for writ of mandamus is void and unenforceable.

72. Collins has been required to retain legal counsel in this action, and is entitled to an award of attorney's fees and costs of suit.

#### **FOURTH CAUSE OF ACTION**

##### *(Violation of Due Process – 14<sup>th</sup> Amendment)*

73. Plaintiff repeats and realleges each of the foregoing allegations, as though fully set forth herein.

74. Tom Collins is entitled to the rights of substantive and procedural due process made applicable by the 14<sup>th</sup> Amendment to the Constitution of the United States.

75. Tom Collins, as a County Commissioner, has the right and duty to vote on expenditures for the public good and road-improvement projects in Clark County.

76. Tom Collins was not present at the U.S. District Court hearing on August 25, 2009.

77. The U.S. District Court did not make any finding of fact or conclusion of law that Tom Collins cast his vote on the Bid under any unlawful bias or influence.

78. The substantive laws of the State of Nevada permit Tom Collins to participate in the re-hearing on the Bid, and to cast his vote.

79. The order granting Fisher Sand & Gravel's petition for a writ of mandamus, issued by the U.S. District Court in Case No. 2:09-cv-1372-RCJ-GWF, violates Tom Collins' substantive and procedural due process rights to fulfill his duties



as a County Commissioner and elected representative of the people.

80. The order granting Fisher Sand & Gravel's petition for a writ of mandamus, issued by the U.S. District Court in Case No. 2:09-cv-1372-RCJ-GWF, is void and unenforceable as to Tom Collins.

81. Collins has been required to retain legal counsel in this action, and is entitled to an award of attorney's fees and costs of suit.

### **FIFTH CAUSE OF ACTION**

#### *(Defamation)*

82. Plaintiff repeats and realleges each of the foregoing allegations, as though fully set forth herein.

83. Fisher Sand and Gravel, Las Vegas Paving, and/or Clark County, Nevada, have made public statements that Tom Collins is biased and unfit to vote on the Bid.

84. The statements are not true.

85. The statements are not privileged in the context in which they were made.

86. The statements constitute negligence and/or intentional action on behalf of the Defendants.

87. As an elected representative on he Clark County Commission, Tom Collins is particularly susceptible to harm from false and defamatory statements regarding bias, character, and/or fitness to perform his duties as a County Commissioner.

88. Tom Collins has suffered actual and/or presumed damages as a result of Defendants' defamatory statements, in an amount to be proven at trial.

89. Collins has been required to retain legal counsel in this action, and is entitled to an award of attorney's fees and costs of suit.

### **SIXTH CAUSE OF ACTION**

#### *(Civil Conspiracy)*

90. Plaintiff repeats and realleges each of the foregoing allegations, as though fully



set forth herein.

91. Fisher Sand & Gravel, Las Vegas Paving, and/or Clark County, Nevada, or some combination of them, cooperated and conspired to gerrymander the Clark County Commission, specifically by disallowing certain voters and leaving other voters in place, for the purpose of making it easier for Fisher Sand & Gravel to win the Bid at the re-vote.

92. Fisher Sand & Gravel, Las Vegas Paving, and/or Clark County, Nevada, or some combination of them, cooperated and conspired to defame Tom Collins as described above.

93. The means and goals of the conspiracy are unlawful, as described above.

94. An agreement or understanding existed between Fisher Sand & Gravel, Las Vegas Paving, and/or Clark County, Nevada, or some combination of them, regarding the means and goals of this conspiracy.

95. The means and goals of the conspiracy harm Tom Collins, individually and in his capacity as an elected representative of the people on the Clark County Commission.

96. Acts were taken in furtherance of the goals of the conspiracy, such as:

a) Coming to a decision permitting the writ or mandamus, in violation of state and federal law; and

b) Drafting and submitting to the court an order granting the petition for a writ of mandamus, which specifically deprived Tom Collins of his right to vote.

97. Tom Collins has suffered actual damage as a result of the conspiracy, in an amount to be proven at trial.

98. Collins has been required to retain legal counsel in this action, and is entitled to an award of attorney's fees and costs of suit.

#### **PRAYER FOR RELIEF**

Wherefore, Tom Collins prays for relief as follows:



1. For declaratory judgment stating that the writ of mandamus in Case No. 2:09-cv-1372-RCJ-GWF, is void and unenforceable as it applies to Tom Collins, and that he may vote on the Bid;
2. For preliminary and permanent injunctions preventing the Defendants from further interfering with his right and duty to vote;
3. For actual damages, in an amount to be determined at trial;
4. For presumed damages, in an amount to be determined at trial;
5. For exemplary and/or punitive damages, in an amount to be determined at trial; and
6. For attorney's fees and costs of suit.

DATED this 5<sup>th</sup> day of October, 2009.

ELLSWORTH, MOODY & BENNION

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